

Senate Study Bill 3128 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON COMMERCE BILL BY
CHAIRPERSON SCHULTZ)

A BILL FOR

1 An Act relating to contract pharmacies and covered entities
2 that participate in the 340B drug program.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 510D.1 Definitions.

2 As used in this chapter, unless the context otherwise
3 requires:

4 1. *"340B program"* means the program created pursuant to the
5 Veterans Health Care Act of 1992, Pub. L. No. 102-585, section
6 602, and codified as section 340B of the federal Public Health
7 Services Act.

8 2. *"Contract pharmacy"* means a pharmacy that has executed a
9 contract with a covered entity to dispense covered outpatient
10 drugs, purchased by the covered entity through the 340B
11 program, to eligible patients of the covered entity.

12 3. *"Covered entity"* means the same as defined in 42 U.S.C.
13 §256b(a)(4).

14 4. *"Group health plan"* means the same as defined in section
15 513B.2.

16 5. *"Medicaid managed care organization"* means an entity that
17 is under contract with the Iowa department of human services
18 to provide services to Medicaid recipients and that also meets
19 the definition of *"health maintenance organization"* in section
20 514B.1.

21 6. *"Pharmacy benefits manager"* means the same as defined in
22 section 510B.1.

23 7. *"Similarly situated entity or pharmacy"* means an entity
24 or pharmacy that is of a generally comparable size, and that
25 operates in a market with similar demographic characteristics,
26 including population size, density, distribution, and vital
27 statistics, and reasonably similar economic and geographic
28 conditions.

29 8. *"Third-party administrator"* means the same as defined in
30 section 510.11.

31 Sec. 2. NEW SECTION. 510D.2 340B drug program — contract
32 pharmacies and covered entities.

33 1. Group health plans, health insurance issuers that offer
34 group or individual health insurance coverage, third-party
35 administrators, and pharmacy benefits managers shall not

1 discriminate against a covered entity or a contract pharmacy
2 by reimbursing the covered entity or the contract pharmacy for
3 a dispensing fee in an amount less than the group health plan,
4 health insurance issuer, third-party administrator, or pharmacy
5 benefits manager reimburses a similarly situated entity or
6 pharmacy that is not a covered entity or a contract pharmacy.

7 2. a. Group health plans, health insurance issuers that
8 offer group or individual health insurance coverage, third-
9 party administrators, Medicaid managed care organizations, and
10 pharmacy benefits managers shall not, solely on the basis that
11 an entity is a covered entity or that a pharmacy is a contract
12 pharmacy, or that a covered entity or contract pharmacy
13 participate in the 340B program, impose any of the following
14 contractual terms and conditions on the covered entity or the
15 contract pharmacy that differ from those imposed on a similarly
16 situated entity or pharmacy that is not a covered entity or a
17 contract pharmacy:

18 (1) Fees or other assessments that are not required by state
19 law or the Iowa administrative code.

20 (2) Professional dispensing fees that are not required by
21 state law or the Iowa administrative code.

22 (3) Restrictions or requirements related to participation
23 in standard or preferred pharmacy networks.

24 (4) Requirements related to the frequency or scope of
25 audits.

26 (5) Requirements related to inventory management systems
27 that utilize generally accepted accounting principles.

28 (6) Requirements related to mandatory disclosure either
29 directly or through a third party, except disclosures required
30 by federal law, of prescription orders that are filled with
31 covered outpatient drugs obtained through the 340B program.

32 b. Paragraph "a", subparagraph (1), shall not be construed
33 to prohibit adjustments for overpayments or other errors
34 associated with an adjudicated claim.

35 3. Group health plans, health insurance issuers that offer

1 group or individual health insurance coverage, third-party
2 administrators, Medicaid managed care organizations, and
3 pharmacy benefits managers shall not do any of the following:

4 *a.* Place any restrictions or impose any requirements on
5 an individual that chooses to obtain a covered outpatient
6 drug from a covered entity or a contract pharmacy, whether in
7 person, via courier or the United States post office, or any
8 other form of delivery.

9 *b.* Refuse to contract with a covered entity or a contract
10 pharmacy based on any criteria that is not applied equally to
11 contract with a similarly situated entity or pharmacy that does
12 not participate in the 340B drug program.

13 *c.* Impose any restriction or condition, as identified by
14 the commissioner by rule, on a covered entity that interferes
15 with the covered entity's ability to maximize the value of the
16 discounts obtained by the covered entity through the covered
17 entity's participation in the 340B drug program.

18 Sec. 3. NEW SECTION. 510D.3 Penalties.

19 The commissioner of insurance shall impose a civil penalty,
20 not to exceed five thousand dollars per violation per day, on
21 any entity that violates this chapter.

22 Sec. 4. NEW SECTION. 510D.4 Rules.

23 No later than one hundred eighty days after the date of
24 enactment of this chapter, the commissioner of insurance shall
25 adopt rules as necessary to implement the chapter.

26 Sec. 5. NEW SECTION. 510D.5 Applicability.

27 This chapter shall apply to covered entities, contract
28 pharmacies, and Medicaid managed care organizations regardless
29 of whether the covered entity, contract pharmacy, or Medicaid
30 managed care organization is eligible to retain the discounts
31 generated by the covered entity's, contract pharmacy's, or
32 Medicaid managed care organization's participation in the 340B
33 program.

34 Sec. 6. PREVENTION OF DUPLICATE DISCOUNTS — DEPARTMENT
35 OF HUMAN SERVICES. Within one calendar year of the date of

1 enactment of this chapter, the director of the department
2 of human services shall contract with a third-party
3 vendor or create a role within the department for the
4 purpose of establishing a process, pursuant to 42 U.S.C.
5 §1396r-8(a)(5)(C), to prevent the state from submitting claims
6 for Medicaid rebates for covered outpatient drugs purchased by
7 covered entities through the 340B drug program.

8 EXPLANATION

9 The inclusion of this explanation does not constitute agreement with
10 the explanation's substance by the members of the general assembly.

11 This bill relates to contract pharmacies and covered
12 entities that participate in the 340B drug program (340B
13 program). "340B drug program", "contract pharmacy", and
14 "covered entity" are defined in the bill.

15 Group health plans (plans), health insurance issuers that
16 offer group or individual health insurance coverage (issuers),
17 third-party administrators (administrators), and pharmacy
18 benefits managers (PBM) are prohibited from discriminating
19 against a covered entity or a contract pharmacy by reimbursing
20 the covered entity or the contract pharmacy a dispensing fee
21 in an amount less than the plan, issuer, administrator, or PBM
22 reimburses a similarly situated entity or pharmacy that is not
23 a covered entity or a contract pharmacy. "Similarly situated
24 entity or pharmacy" is defined in the bill.

25 Plans, issuers, administrators, Medicaid managed care
26 organizations (MCOs), and PBMs shall not, solely on the basis
27 that an entity is a covered entity or that a pharmacy is
28 a contract pharmacy, or that a covered entity or contract
29 pharmacy participates in the 340B program, impose certain
30 contractual terms and conditions, as described in the bill, on
31 the covered entity or contract pharmacy that differ from those
32 imposed on a similarly situated entity or pharmacy that is
33 not a covered entity or a contract pharmacy. Plans, issuers,
34 administrators, MCOs, and PBMs are also prohibited from
35 placing restrictions or imposing requirements on individuals

1 that choose to obtain a covered outpatient drug from a
2 covered entity or a contract pharmacy, whether in person, via
3 courier or the United States post office, or any other form
4 of delivery; refusing to contract with a covered entity or a
5 contract pharmacy based on any criteria that is not applied
6 equally to a contract with a similarly situated entity or
7 pharmacy that does not participate in the 340B program; or
8 imposing any restriction or condition as identified by the
9 commissioner of insurance (commissioner) by rule, on a covered
10 entity that interferes with the covered entity's ability to
11 maximize the value of the discounts obtained by the covered
12 entity through the covered entity's participation in the 340B
13 program.

14 "Group health plan" and "third-party administrator" are
15 defined in the bill.

16 The commissioner shall impose a civil penalty, not to exceed
17 \$5,000 per violation per day, on any entity that violates a
18 provision of the bill.

19 No later than 180 days after the date of enactment of the
20 bill, the commissioner shall adopt rules as necessary to
21 implement the bill.

22 The bill applies to covered entities, contract pharmacies,
23 and MCOs regardless of whether the covered entity, contract
24 pharmacy, or MCO is eligible to retain the discounts generated
25 by the covered entity's, contract pharmacy's, or MCO's
26 participation in the 340B program.

27 Within one calendar year of the date of enactment of the
28 bill, the director of the department of human services shall
29 contract with a third-party vendor or create a role within the
30 department for the purpose of establishing a process, pursuant
31 to 42 U.S.C. §1396r-8(a)(5)(C), to prevent the state from
32 submitting claims for Medicaid rebates for covered outpatient
33 drugs purchased by covered entities through the 340B drug
34 program.